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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/553,865	10/21/2005	Akira Nakayama	4670-0112PUS1	1243
2292 7590 04/10/2009 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER				
RHEE, JANE J				
ART UNIT		PAPER NUMBER		
1795				
NOTIFICATION DATE		DELIVERY MODE		
04/10/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/553,865

Applicant(s)

NAKAYAMA ET AL.

Examiner

JANE RHEE

Art Unit

1795

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 March 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-12.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Jane Rhee/
Primary Examiner, Art Unit 1795

Continuation of 11, does NOT place the application in condition for allowance because: In response to applicant's argument that Yamamoto et al. fail to disclose a copolymer that exhibits a swelling degree of 4 or below in an electrolyte obtained by dissolving LiPF₆ in the concentration of 1 mol/liter into a solvent of 1:2 (volume ratio at 20°C) mixture of ethylene carbonate and diethyl carbonate, Yamamoto et al. teaches the same copolymer desired by the applicant, methylmethacrylate and fumaric acid (col. 4 line 48 and col. 5 line 6) and an electrolyte obtained by dissolving LiPF₆ in the concentration of 1 mol/liter into a solvent of 1:2 (volume ratio at 20°C) mixture of ethylene carbonate and diethyl carbonate (col. 16 line 35-40), it is inherent that that the copolymer exhibits a swelling degree of 4 or below. Furthermore, Yamamoto teaches the same method in which the copolymer exhibits a swelling degree of 4 or below in an electrolyte on col. 16 lines 35-40.

The declaration under 37 CFR 1.132 filed 8/18/08 is insufficient to overcome the rejection of claims 1-12 based upon 35 U.S.C. 102(b) rejections anticipated by Yamamoto et al. as set forth in the last Office action because: First of all, a declaration can not be used to overcome a 102(b) rejection. Secondly, the examples shown in the declaration do not use the same materials as in applicant's present invention therefore can not be compared accurately. Of course different material provide different swelling property, however Yamamoto discloses the same materials desired by the applicant for the copolymer and electrolyte, therefore would inherently have a swelling degree of 4 or below.

In response to applicant's argument that Yamamoto et al. is not prior art, Yamamoto et al. has a PCT Publication No. WO0045452 which was published on Aug 3, 2000, which is the date used as the 102(b) date rejection. Yamamoto et al. 6756153 is used as the English translation for WO0045452.